



EUROPEAN COMMISSION

Brussels, 2.6.2010
COM(2010) 291 final

REPORT FROM THE COMMISSION

ANNUAL REPORT 2009

**ON RELATIONS BETWEEN THE EUROPEAN COMMISSION AND NATIONAL
PARLIAMENTS**

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1. INTRODUCTION

The year 2009 was marked by important institutional events, with the election of a new European Parliament in June, the end of the mandate of the Barroso I Commission and the entry into force of the Lisbon Treaty on 1 December. As regards the relations between the Commission and national Parliaments, 2009 saw a further consolidation of the political dialogue (chapter 2), with the number of opinions and of participating chambers steadily increasing; frequent and fruitful contacts and exchanges between the Commission and national Parliaments at all levels (chapter 3); as well as particularly intensive preparations, on both sides, with a view to the entry into force of the Lisbon Treaty and the implementation of its new provisions concerning national Parliaments (chapter 4).

While the previous annual report¹ presented a general stocktaking of the outgoing Commission's relations with national Parliaments, this report also takes the opportunity to point to the new Commission's main priorities and ambitions as regards the evolution of relations with national Parliaments during the coming mandate.

2. POLITICAL DIALOGUE

2.1. Participation of national Parliaments and focus of opinions

Varying degrees of participation

In 2009, national Parliaments sent 250 opinions to the Commission in the context of the political dialogue (compared to 200 in 2008), which confirmed the clear upward trend. There have now been a total of 618 opinions received from 35 national assemblies (out of 40) of 25 Member States between September 2006 and December 2009.

As in previous years, there has been a group of particularly active chambers, in particular the Portuguese *Assembleia da Republica* (47 opinions), the Czech Senate (27), the two Dutch chambers jointly (19), the Swedish *Riksdag* (18), the Italian Senate (17), the German *Bundesrat* (16), the UK *House of Lords* (14), the French Senate (12), the Danish *Folketing* (12), the Austrian *Bundesrat* (10) and the Greek House of Representatives (10). These 12 assemblies were responsible for around three quarters of all national Parliament opinions received in 2009. In particular the number of opinions coming from the Czech Senate, the Italian Senate, the Austrian *Bundesrat* and the Greek House of Representatives has significantly increased over the year compared to 2008, while it is worth noting that the Austrian *Nationalrat* and the Maltese House of Representatives participated in 2009 for the first time in the political dialogue.

¹ COM(2009) 343.

On the other hand, 10 chambers sent no opinions in 2009 and the participation of 13 chambers was limited to opinions adopted in the context of the COSAC-coordinated subsidiarity tests. Since 2006, five assemblies have not participated at all in this dialogue – the lower and upper assemblies in Spain and Romania, and the Slovenian upper chamber (*Državni svet*). However, it should be highlighted that in most of the cases where the chambers participate less actively in the political dialogue, they do so deliberately, as they define their role in European affairs rather via the scrutiny of their respective governments than of the Commission.

Scope of national Parliament opinions

The 250 opinions issued by national Parliaments concerned no less than 139 Commission documents. Out of these 139, only 10 documents were commented on by 4 or more assemblies (without counting the 3 proposals covered by the COSAC-coordinated subsidiarity tests).

The communications and proposals which attracted national Parliaments' greatest attention, concerned the Stockholm programme² (8 opinions), the cross-border healthcare directive³ (7⁴), the consumer rights directive⁵ (6), the framework decisions on trafficking in human beings⁶ (6) and on sexual abuse of children⁷ (5), the Green papers on collective redress⁸ (5) and on learning mobility of young people⁹ (5), the communication on European financial supervision¹⁰ (4), the directive on minimum norms for asylum seekers¹¹ (4), and the Annual Policy Strategy 2010¹² (4).

About half the 250 opinions received during 2009 referred to legislative proposals and one half to Commission communications or consultation documents. 36 opinions were given on Green Papers. It should be noted that, in accordance with their internal procedures, the very active Swedish and Danish Parliaments continue to participate in the political dialogue with the Commission only with regard to non-legislative documents.

Overall, the majority of opinions focussed on policy issues, with only 13 opinions referring to documents on programming or institutional questions. Those policy fields on which national Parliaments mostly focused their attention were Justice, Liberty and Security (83 opinions, including those issued in the context of 2 COSAC subsidiarity tests), Health and Consumer Protection (38, including those issued in the context of one COSAC subsidiarity test), Transport and Energy (22), Education and Culture (14), Environment (12) and Enterprise (10).

² COM(2009) 262.

³ COM(2008) 414.

⁴ It should be noted that 3 of the 7 opinions were received in late 2008.

⁵ COM(2008) 614.

⁶ COM(2009) 136.

⁷ COM(2009) 135.

⁸ COM(2008) 794.

⁹ COM(2009) 329.

¹⁰ COM(2009) 252.

¹¹ COM(2008) 815.

¹² COM(2009) 73.

In May 2009, the Commission launched a dedicated website on Europa¹³, on which it publishes all opinions received from national Parliaments in the context of the political dialogue, as well as the replies from the Commission. Currently the website contains only opinions received in 2008 and 2009, but the Commission is working to include progressively opinions received since the start of the political dialogue with the national Parliaments in September 2006.

2.2. Evaluation of national Parliaments' opinions and Commission replies

The vast majority of opinions were in general positive, welcoming the Commission initiatives and proposals but at the same time putting forward concrete remarks, suggestions for amendment as well as constructive criticism. In their opinions, most of the national Parliaments examined substantive political issues, commenting mainly on the broader content of a Commission proposal, with relatively few opinions containing remarks on the legal base or the principles of subsidiarity and proportionality.

Of 250 opinions received in 2009, less than 25 expressed subsidiarity related concerns. These referred to about 15 legislative and non-legislative Commission documents. Those chambers with a particular interest in subsidiarity questions were the French Senate, the Austrian *Bundesrat*, the German *Bundesrat*, as well as the Dutch, Portuguese and Greek Parliaments. Although not questioning the respect of subsidiarity as such, some opinions also pointed to what they considered an insufficient justification as regards a given proposal's compliance with the principle of subsidiarity.

As far as bicameral systems are concerned, it is worth noting that, in some instances, the two chambers did not always share the same views as regards the assessment of subsidiarity compliance. For example, the two Dutch chambers disagreed on this issue with regard to the proposal on Critical Infrastructure Warning Information Network (CIWIN)¹⁴ and to the directive on Energy performance of buildings¹⁵, and the two chambers of the French Parliament presented diverging views on the subsidiarity compliance of the proposal on animal-testing¹⁶.

It should also be mentioned that in 2009 the Commission received several opinions adopted by the national Parliaments in the context of three COSAC coordinated subsidiarity tests: the first one on the directive on standards of quality and safety of human organs intended for transplantation¹⁷, launched in December 2008; the second on the framework decision on the right to interpretation and to translation in criminal proceedings¹⁸, launched in July 2009; and the third on the regulation on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession¹⁹, launched in October 2009. In all three exercises, a very large majority of participating chambers confirmed the proposals' compliance with the subsidiarity principle. As regards the first case, only the Austrian

¹³ http://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npo/index_en.htm

¹⁴ COM(2008) 676.

¹⁵ COM(2008) 780.

¹⁶ COM(2008) 543.

¹⁷ COM(2008) 818.

¹⁸ COM(2009) 338.

¹⁹ COM(2009) 154.

Bundesrat issued a negative subsidiarity opinion; in the second exercise, the Austrian *Bundesrat* was joined by the Irish and Maltese Parliaments in contesting subsidiarity compliance, with 11 other chambers finding the Commission's justification in its explanatory memorandum not entirely satisfactory; and with respect to the last proposal, only the Belgian Senate indicated a breach of subsidiarity.

The political dialogue on key documents

Taking into account that the great majority of Commission documents were not commented on by more than 3 chambers, the following analysis focuses on the most representative files and cites some concrete examples to illustrate certain findings.

- Stockholm Programme

The Commission Communication on "Area of freedom, security and justice serving the citizen"²⁰ (the Stockholm programme) was a particular focus of national Parliaments' attention in 2009. 8 opinions were submitted to the Commission, while some others were sent directly to the European Parliament, which held a joint inter-parliamentary meeting on this issue in November 2009. All opinions received expressed support for the Commission Communication. A large majority welcomed that individual rights were placed at the centre of the next multiannual programme and that citizens were put at the heart of the project. Among individual rights raised by several chambers, the need to protect the right to privacy was raised most often. Concerns were raised as to the efficiency of instruments of internal resettlement, the common European Schengen visa, the establishment of a common system for admission of legal migrants, the fact that legal migrants should obtain similar rights to EU citizens, as well as regarding the proposed abolition of *exequatur*. The need to ensure respect of the subsidiarity principle in the field of civil protection was equally highlighted.

- Consumer rights directive

A similar interest was shown by national Parliaments with regard to the Commission's proposal for a directive on consumer rights²¹, on which the Commission received 6 opinions, many of them voicing important concerns. Five chambers thought the proposal was contrary to the principles of subsidiarity on the grounds that the introduction of full harmonisation in certain areas of consumer and contract law would not allow for the application of national law, which, according to them, provided for a higher level of consumer protection. Further, several chambers stated that the proposal seemed to concentrate on facilitating cross-border operations rather than on protecting consumer rights. Finally, national Parliaments questioned the choice of the legal base and considered the impact assessment to be insufficient, in particular as far as the lack of concrete statistics underpinning the proposal, and the exclusion of digital goods and pure services from its scope were concerned.

- Cross-border healthcare directive

As for the directive on the application of patients' rights in cross-border healthcare²², 3 out of 7 opinions²³ raised subsidiarity concerns or commented, more generally, on subsidiarity

²⁰ COM(2009) 262.

²¹ COM(2008) 614.

²² COM(2008) 414.

²³ 3 out of 7 opinions were received in late 2008.

aspects. Several chambers perceived the Commission's proposal as a text that might put into question Member States' ability to manage health services' supply and to maintain a financial balance in their social security systems. National Parliaments pointed out, for instance, that the impact assessment did not emphasise the risk Member States might face due to the loss of control over patients flows. They also stressed that only Member States could evaluate the impact of the proposal on the financing and organization of national health care systems, and called to abolish the provision according to which the Commission could set guidelines facilitating the definition, by the Member States, of quality and security standards for health care services.

- European Financial Supervision

Another issue, which was clearly at the centre of national Parliaments' attention during 2009, was the financial crisis, with four chambers commenting on the Commission Communication on European Financial Supervision²⁴. Among the national Parliaments, which expressed themselves on this document, some underlined that in the long term financial supervision would have to be handled by a European authority with the power to take binding decisions, and that the system proposed by the Commission should be revised within two or three years. One national Parliament did not share this particular view and was not willing to accept reducing national supervisors' responsibilities. Instead, it favoured a regulatory framework for transnational activities of large financial operators.

- Green papers on collective redress and on learning mobility of young people

The Commission received opinions from five chambers concerning the Green Paper on collective redress²⁵, four of them going in the same direction in that they stressed that there was no need for a Europe-wide binding regulation of this matter and suggested only very targeted legislation or even adoption of "soft law" measures. Only one national Parliament called for the introduction of binding arrangements for collective redress (common EU system). To be noted that one national Parliament, after having received a first reply from the Commission, issued a second opinion on the matter of mass claims, in which, although maintaining its general reserve as regards EU legislation in this area, expressed its appreciation of the Commission's assurance that any future initiative would not lay the ground for the development of a litigation "industry" as existed in some non-European countries.

Five chambers expressed their views on the Green Paper on learning mobility of young people²⁶, broadly supporting the initiative of the Commission and the objectives of the Green Paper. National Parliaments considered that transnational mobility shouldn't be reserved only to young people, taking into account that the promotion of life-long learning was one of the Commission's key objectives. They also stressed that European programmes should be flexible in terms of length, timing and participating countries and pointed out that special attention should be paid to the improvement of young people's knowledge of foreign languages and to the recognition of studies as a prerequisite for mobility. Some chambers encouraged the Commission to integrate into the renewed Lisbon strategy the promotion of mobility in the context of apprenticeship.

²⁴ COM(2009) 252.

²⁵ COM(2008) 794.

²⁶ COM (2009) 329.

Commission's replies to national Parliaments' opinions

The Commission's replies to national Parliaments' opinions are signed by the Vice President responsible for relations with national Parliaments, after formal adoption by the Commission, which is preceded by a preliminary consultation of all cabinets and services involved. In its answers to national Parliaments, the Commission often seeks to better explain its initial proposals, where possible by giving detailed examples to underpin a given position. Where appropriate, the replies also contain reactions to the concrete comments and suggestions made by national Parliaments giving indications as to whether or not the Commission can give them further consideration. It goes without saying that the Commission's replies always have to reflect and respect the institutional balance as set out in the Treaties. They also largely depend on the timing of a given opinion and, in the case of legislative files, on the stage reached in the interinstitutional procedure.

Replies to Green Papers and other consultation documents are usually limited in scope for as long as the consultations are ongoing or their results have not yet been evaluated.

3. CONTACTS AND VISITS

As in previous years, Commissioners and their services were particularly active and committed in their contacts and exchanges with representatives of national Parliaments. Apart from numerous bilateral meetings between Members of the Commission and national Parliaments, the Commission was represented at political level in all major interparliamentary meetings, which were held over the year 2009, namely the Conference of Speakers of EU Parliaments in February in Paris, the COSAC Chairpersons' meeting in February in Prague and in July in Stockholm, the COSAC plenary sessions in May in Prague and in October in Stockholm, as well as the Joint Parliamentary Meetings in February and November in Brussels.

Apart from this, Commission services regularly met their counterparts from national Parliaments, be it in the framework of the regular meetings with permanent representatives of national Parliaments in Brussels (12 regular meetings in 2009 plus a half-day seminar organised by the Commission in June), in conferences and hearings organised by different assemblies in the respective capitals, or in the different thematic workshops organised by the European Parliament for national Parliaments officials. To be particularly highlighted are the first participation of Commission services from the Secretariat General at the IPEX Board meeting in October in Copenhagen, as well as the intervention of the Secretary General of the Commission at the meeting of Secretaries General of EU Parliaments in December in Brussels, a few days after the entry into force of the Lisbon Treaty.

The main focus of these contacts and exchanges between the Commission and national Parliaments in 2009 was the entry into force and implementation of the Lisbon Treaty, questions related to the area of Freedom, Liberty and Justice but also issues related to the economic and financial crisis.

4. LISBON TREATY

The Lisbon Treaty, which entered into force on 1 December 2009, represents a major advance as regards the role of national Parliaments at EU level. For the first time, national Parliaments are mentioned in the main body of the Treaty. Article 12 TEU states explicitly that "*national*

Parliaments contribute actively to the good functioning of the Union". Thereafter that article lists a series of new rights, which underline the central importance of national Parliaments in the Union's democratic fabric.

Featuring most prominently among national Parliaments' new rights is certainly their responsibility to *"ensure compliance with the principle of subsidiarity in accordance with the procedure set out in Protocol [No 2]"*, commonly known as "subsidiarity control mechanism" or the "yellow and orange card procedure". This mechanism implies the final possibility for the legislator to stop the ordinary legislative procedure, if a given number of national Parliaments questions the compliance with the subsidiarity principle of a particular legislative proposal.

As regards the implementation of the new Treaty provisions concerning national Parliaments, and in particular the subsidiarity control mechanism, the Commission in late November 2009 established internal arrangements allowing it to effectively apply this new instrument as of the day the Treaty entered into force. National Parliaments and the legislator were informed of these procedures by a joint letter of the President and Vice President of the Commission, sent on 1 December to the Presidents of the 40 chambers and of the European Parliament and Council²⁷. The Commission defined these arrangements in the light of numerous discussions it has had over the previous years at political and services level with national Parliaments, and it ensured that they take into account all major concerns expressed by national Parliaments. As experience is gained in this regard in the future months, some aspects of these arrangements may need to be adapted.

The key message in the letter of 1 December was that the Commission sees the subsidiarity control mechanism as a political, and not as a purely accounting exercise, that it is confident that national Parliaments will use this instrument in a responsible and constructive way and that the Commission intends to put the right measures in place to facilitate the use of this new instrument as a practical tool for national Parliaments. The letter and the Commission's overall approach were very well received by national Parliaments.

Given the caretaker role of the outgoing Commission between 1 November 2009 and 10 February 2010, no major legislative proposals were adopted during the two months following the entry into force of the new Treaty. The first proposals falling under the scope of the subsidiarity control mechanism were adopted and transmitted to national Parliaments only at the beginning of February 2010.

5. OUTLOOK

The Commission is committed to a smooth and effective implementation of the provisions of the Lisbon Treaty regarding national Parliaments and in particular the subsidiarity control mechanism. This will be one of the priorities of the current Commission when it comes to defining its relationship with national Parliaments.

In parallel, and more generally, it will be of key importance to consolidate the partnership with national Parliaments, by enhancing and strengthening the political dialogue, in full respect of the institutional balance at EU level. The continuation of this dialogue will allow both sides to engage in a broader, more political exchange of views, not only limited to

²⁷ http://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npo/index_en.htm

legislative proposals and going well beyond the issue of subsidiarity. The Commission will thus continue to examine carefully all opinions it receives from national Parliaments, convinced that this constructive and effective communication will further strengthen the relationship between European institutions and citizens throughout Europe.

The Commission sees the subsidiarity control mechanism and the political dialogue as two sides of the same coin, with the former being part of a wider political relationship between the Commission and national Parliaments. National Parliaments have very much welcomed this approach, given that up until now they have tended to focus their opinions on the substance of Commission documents rather than on subsidiarity aspects.

By strengthening its political partnership with national Parliaments, the Commission aims to improve the process of policy formulation, both as regards legislative and non-legislative measures; to involve national Parliaments more closely in European affairs, most of which have become in the course of the last years internal affairs, thereby bringing Europe closer to citizens; and lastly to increase the Commission's understanding of national dynamics and processes.

As regards the improvement of policy formulation, it is true that it might not always be easy to measure the concrete impact of national Parliaments' opinions on a given final legislative act. However, it is important to know that each time the Commission is negotiating legislative files with the legislators, it is now able to do so in full knowledge of the opinions expressed by national Parliaments. Likewise, when the Commission is deciding on its position to be defended in the European Parliament and the Council, it can be informed by the views expressed by national Parliaments on the relevant dossier. In many cases opinions expressed by national Parliaments are reflected in the legislative process by either the Parliament or the Council, which clearly points to the added value of national Parliaments opinions: If delivered on time, they can act as an early warning system providing an outline of the main positions on the Commission proposal, which are often mirrored later on in the legislative process. Obviously, if opinions arrive particularly late and only from a few national Parliaments, the impact on ongoing interinstitutional discussions remains relatively low.

In the course of the last five years, the Commission's relations with national Parliaments have fundamentally evolved, becoming closer and more substantial. This trend will continue with the Lisbon Treaty. National Parliaments now have a more important role at EU level and can therefore become key actors whose positions will need to be factored in by the EU institutions. In this way, the national Parliaments will quickly become an integral part of the decision making processes at EU level.

However, further progress is still possible, on both sides. Realising the potential of this political partnership and establishing even more constructive relations will remain a key objective. The Commission will closely monitor the proper implementation of the new Treaty provisions concerning national Parliaments, and in this sense it will be particularly vigilant that it meets the subsidiarity related requirements contained in Protocol 2. Furthermore, the Commission would like to encourage those national Parliaments who do not yet participate in the political dialogue to engage in an active exchange of views with the Commission. It also aims at closely involving national Parliaments in the implementation of Europe 2020 and is open to examine possible methods of cooperation as regards the implementation of the EU Budget, and in particular the fight against fraud. In both areas, the Commission counts on the active support of national Parliaments in achieving its objectives. Furthermore, the Commission will be particularly attached to regular and substantial information of national

Parliaments with regard to programming issues In this regard, it will aim to present the Commission Work Programme to the permanent representatives of national Parliaments as soon as possible after its adoption. The Commission is also committed to respond in full to COSAC contributions and conclusions.

With regard to the new Treaty provisions concerning national Parliaments' involvement in the political monitoring and evaluation of the activities of Europol and Eurojust, the Commission is aware of national Parliaments' requests to be duly consulted by the Commission before it presents proposals for the respective regulations, which have been included in the Commission Work Programme 2010. Before presenting these new proposals, the Commission will carefully evaluate the implementation of the existing decisions concerning Eurojust and Europol and will consult all parties involved. National Parliaments will be closely associated to these preparatory works.

The Commission is determined to promote further the role of national Parliaments by keeping them at the top of its institutional and political agenda.

Number of opinions received per country/chamber

		Total
PORTUGAL	Assembleia da Republica	47
CZECH REP.	Senát	27
SWEDEN	Riksdagen	18
ITALY	Senato della Repubblica	17
GERMANY	Bundesrat	16
UNITED KINGDOM	House of Lords	14
DENMARK	Folketinget	12
FRANCE	Sénat	12
GREECE	Vouli ton Ellnion	10
AUSTRIA	Bundesrat	10
ITALY	Camera dei Deputati	9
THE NEETHERLANDS	Both Chambers	8
THE NEETHERLANDS	Tweede Kamer Staten Generaal	7
IRELAND	Oireachtas	6
THE NEETHERLANDS	Eerste Kamer Staten Generaal	4
AUSTRIA	Nationalrat	4
GERMANY	Bundestag	3
LATVIA	Saeima	3
LITHUANIA	Seimas	3
LUXEMBOURG	Chambre des Députés	3
HUNGARY	Országgyűlés	3
BELGIUM	Chambre des Représentants	2
BELGIUM	Sénat	2
BULGARIA	Narodno Sabranie	2
FRANCE	Assemblée Nationale	2
SLOVENIA	Državni zbor	2
CZECH REP.	Poslanecká sněmovna	1
ESTONIA	Riigikogu	1
CYPRUS	House of Representatives	1
MALTA	House of Representatives	1
SPAIN	Congreso de los Diputados	0
SPAIN	Senado	0
POLAND	Senat	0
POLAND	Sejm	0
ROMANIA	Camera Deputaților	0
ROMANIA	Senatul	0
FINLAND	Eduskunta	0
SLOVENIA	Državni svet	0
SLOVAKIA	Národná rada	0
UNITED KINGDOM	House of Commons	0
		Total
	TOTAL	250

Number of opinions received per Directorate General in 2009

DG responsible	TOTAL
Justice, Freedom and Security	83
Health and Consumer Protection	38
Energy and Transport	22
Education and Culture	14
Secretariat-General	14
Environment	12
Enterprise and Industry	10
Internal Market and Services	9
Employment, Social Affairs and Equal Opportunities	7
Research	7
Legal Service	6
Regional Policy	5
Agriculture and Rural Development	4
Taxation and Customs Union	4
Information Society and Media	4
Maritime Affairs and Fisheries	4
External Relations	3
Economic and Financial Affairs	2
Eurostat	1
Enlargement	1
Budget	0
Competition	0
Trade	0
Development	0
Total	250

Commission documents receiving the highest number of opinions in 2009²⁸

Commission document	Title	Number of opinions
COM(2009)262	Communication on an area of freedom, security and justice serving the citizen	8
COM(2008)414	Proposal for a directive on the application of patients' rights in cross-border healthcare	7
COM(2008)614	Proposal for a directive on consumers rights	6
COM(2009)136	Proposal for a framework decision on preventing and combating trafficking in human beings, and protecting victims	6
COM(2009)135	Proposal for a framework decision on combating the sexual abuse, sexual exploitation of children and child pornography	5
COM(2008)794	Green Paper on Consumer Collective Redress	5
COM(2009)329	Green Paper on learning mobility of young people	5
COM(2009)252	Communication on European financial supervision	4
COM(2008)815	Proposal for a directive laying down minimum standards for the reception of asylum seekers	4
COM(2009)73	Communication on Annual Policy Strategy for 2010	4

²⁸

Non including the three proposals on which COSAC-coordinated subsidiarity checks were carried out.